

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2014-12091
Issue No(s): 3005
Case No.:
Hearing Date: March 11, 2014
County: St. Joseph

ADMINISTRATIVE LAW JUDGE: Dale Malewska

**HEARING DECISION FOR CONCURRENT BENEFITS
INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulations, particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on March 11, 2014 from Lansing, Michigan. The Department was represented by of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on November 18, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, allegedly committed an IPV.

2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. On the Assistance Application signed by Respondent on January 19, 2012, Respondent reported that she intended to stay in Michigan.
5. Respondent began using FAP benefits outside of the State of Michigan beginning in December 23, 2011.
6. The OIG indicates that the time period they are considering the fraud period is January 1, 2012 through December 31, 2012.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
8. During the alleged fraud period, Respondent was issued FAP benefits from the State of [REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and

- the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$ [REDACTED] or more, or
- the total OI amount is less than \$ [REDACTED] and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (7-1-2013), p. 12.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (7-1-2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a Respondent who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1; see *also* 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true.

See M Civ JI 8.01.

In this case, the Department witness has testified that the Respondent was advised to report to the Department any and all household changes – including *residency*. Department policy requires the beneficiary to report any change in circumstance that affects eligibility or benefit amount within 10 (ten) days. See BAM 105

Normally, Respondent's signature on her application for assistance certifies that she was aware that fraudulent participation in the FAP program could result in criminal or civil or administrative claims to be brought against her.

Today's record contains an exemplar showing that the Respondent was awarded FAP benefits – but there was no corresponding evidence showing that she negotiated those benefits in Michigan – or anywhere. See Exhibit #1 – throughout.¹ There was no EBT history from either state – although there was a certification from the [REDACTED] that the Respondent had "...open [REDACTED]." Exhibit #1, page 36.

Dual receipt of EBT benefits is usually strong evidence of fraud. Unfortunately, there was little evidence to support the Department's position either through inadvertence or intentional omission.

Furthermore, the Department's evidence did not support [clearly or firmly] the lack of a mental infirmity in the Respondent.

The DHS 1171 raises several red flags on review; first, the Respondent self-reported the [REDACTED] while its severity is unknown - the hallmark symptoms for this affliction are difficulty concentrating, difficulty making decisions and poor memory.

As evidence pertaining to her mental capacity the ALJ observes that on application² the Respondent identified herself as - one "afflicted with a mental disability – not able to work" then reported herself [on the next line] as "able to work." The Respondent, a [REDACTED], receiving some form of disability payment – the ALJ is reluctant to conclude that the Department met its burden of proof with clear and convincing evidence that the Respondent had no mental impairment limiting her ability to understand her reporting duties and responsibilities on application for benefits.

On review, the Department's case failed on two levels; first, there was a lack of clear and convincing documentary evidence to support the dual-use theory alleged by the Department's witness, there was evidence that the Respondent was issued FAP benefits – but there was no corresponding proof demonstrating Michigan based use – although that information is [presumably] readily available; second, the evidence strongly suggests a mental impairment in the Respondent sufficient to fail the standard mandated for clear and convincing evidence in civil cases.³

In the ALJ's mind it is uncontroverted that the Respondent had FAP benefits authorized in two states – at the same time. But, it was neither clear nor firmly presented that she actually used one or the other – more evidence than presented today would have been

¹The ALJ observes that pages 30 – 32 in the exhibit were blank.

²Exhibit #1, page 18.

³See In Re Martin, 450 Mich 204 at page 227 (1995) "We agree that the clear and convincing evidence standard, [is] the most demanding standard applied in civil cases..."

required to bridge that gap in proof. Furthermore, whether the Respondent had the mental capacity to understand her legal reporting duty under DHS 1171 is in doubt based on the Department's own evidence.

Accordingly, the Department has failed to establish that Respondent committed an IPV involving her FAP benefits. There was no evidence that the Respondent exercised her benefit anywhere or that she had the mental capacity to appreciate her duty to report to DHS.

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Furthermore, Respondents must be shown to suffer no apparent mental impairments limiting their understanding or ability to fulfill reporting responsibilities. BAM 720, pp. 1, 2 [7-1-2013]. This - the Department has failed to establish with clear and convincing evidence. The ALJ finds that the Department has failed to establish that Respondent committed an IPV involving her FAP benefits.

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Respondents who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 12. Refusal to repay will not cause denial of current or future MA if the Respondent is otherwise eligible. [BAM 710 (7-1-2013), p. 2] Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Respondent is not disqualified.

Over-issuance

When a Respondent group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the record also fails to support with clear and convincing evidence that the Respondent received an OI of FAP in the amount of \$ [REDACTED] for the time period of January 1, 2012 through December 31, 2012 [through concurrent program violations].

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent did not commit an intentional program violation (IPV).
2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program FAP.

The Department is ORDERED to delete the OI and cease any recoupment action.



Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/13/14

Date Mailed: 3/14/14

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

DM/tb

cc:

[REDACTED]